

39-6-19 Persons who may serve on a military court.

- (1) A commissioned officer off or on duty with the National Guard may serve on a military court for the trial of any person brought before the court for trial.
- (2) A warrant officer off or on duty with the National Guard may serve on a military court for the trial of any person, other than a superior commissioned officer, who is brought before the court for trial.
- (3)
 - (a) An enlisted member of the National Guard who is not a member of the same unit as the accused may serve on a military court for the trial of any enlisted member brought before the court for trial.
 - (b) However, an enlisted member may serve as a member of a court only if before the conclusion of a session called by the court under Section 39-6-32, or in the absence of the session, before the court is assembled for the trial of the accused, the accused personally has requested in writing that enlisted members serve on the court.
 - (c) If the request is made under Subsection (3)(b), the accused may not be tried by the military court when enlisted members comprise less than 1/2 of the total membership of the court, unless eligible members cannot be obtained on account of physical conditions or military exigencies.
 - (d) If the members cannot be obtained, the court may be assembled and trial held without them, but the convening authority shall make a detailed written explanation of why they could not be obtained. This statement shall be appended to the court record.
 - (e) "Unit" means any regularly organized major command (MACOM) of the National Guard.
- (4)
 - (a) A person subject to this chapter shall be tried by a military court, but no member may be junior to him in rank or grade.
 - (b) When an authority convenes a military court, it shall detail as members of the court those persons who in his opinion are best qualified for the duty by age, education, training, experience, length of service, and judicial temperament.
 - (c) A member is not eligible to serve as a member of a military court when he is the accuser or a witness in the case or has acted as investigating officer or as counsel in the same case.

Amended by Chapter 15, 1989 General Session